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No. _____

In The
Supreme Court of the United States

1690 COBB L.L.C. d/b/a WATERPIPE WORLD,
and ERIK CLABAUGH

and

INSERECTION, A FANTASY STORE, and ERIK CLABAUGH,

Petitioners,

v.

THE CITY OF MARIETTA, BILL DUNAWAY, In his official capacity as Mayor of THE CITY OF MARIETTA, BETTY L. HUNTER, PETE WALDREP, JOHNNY SINCLAIR, ANDY MORRIS, ANTHONY COLEMAN, JIM KING, And PHILIP GOLDSTEIN, In their official capacity as Members of THE MARIETTA CITY COUNCIL

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PAGE

Order of
The Clerk of the Supreme Court
of the State of Georgia
Re: Denying Petition for
Writ of Certiorari
entered October 25, 2004..... 1a

Order of
The Clerk of the Court of Appeals
of the State of Georgia
Re: Denying Application for
Discretionary Appeal
entered July 7, 2004..... 2a

Order of
The Superior Court of
Cobb County, Georgia
Re: Affirming the Action
of the Marietta City Council
Revoking the License of Petitioners
entered May 14, 2004..... 3a

Order of
The Superior Court of
Cobb County, Georgia
Re: Affirming the Action
of the Marietta City Council
Revoking the License of Petitioners
entered May 12, 2004..... 13a

Letter to
Alan Begner from
Douglas Haynie
Re: Confirming Supreme Court's
Denial of Petition for Certiorari,
With Attachment,
dated October 27, 2004 ..... 22a

Petition for Writ of Mandamus and
Writ of Certiorari,
With Exhibits,
entered August 15, 2003 ..... 24a

Exhibits:

A. Letter to
Erik Clabaugh from
Scott Everingham
Re: Notice of Hearing
Regarding Status of
Business License Number
03-41832
dated June 13, 2003 ..... 34a

B. Letter to
Erik Clabaugh from
Scott Everingham
Re: Revoking Business
License Number 03-41832
dated June 23, 2003 ..... 36a

C. Notice of Appeal
dated July 1, 2003 ..... 41a

Petition for Writ of Mandamus and
Writ of Certiorari,
With Exhibits,
entered August 15, 2003 ..... 43a

Exhibits:

A. Letter to
Ralph Megginson from
Scott Everingham
Re: Notice of Hearing
Regarding Status of
Business License Number
03-49421
dated June 13, 2003 ..... 53a

B. Letter to
Ralph Megginson from
Scott Everingham
Re: Revoking Business
License Number 03-49421
dated June 23, 2003 ..... 55a

C. Notice of Appeal
dated July 1, 2003 ..... 60a

Order of
Scott Everingham,
Business License Manager
Re: Revoking Business License Number 03-41832,
With Attachment,
dated June 23, 2003 ..... 62a

Attachment:

City of Marietta Business License
Number 03-41832,
With Attachment,
dated 2003 ..... 66a

Attachment:

Conditions and Stipulations
Regarding License Issued by the
City of Marietta to 1690 Cobb LLC
dated June 24, 1999 ..... 68a

Order of
Scott Everingham,
Business License Manager
Re: Revoking Business License Number 03-49421,
With Attachment,
dated June 23, 2003 ..... 71a

Attachment:

City of Marietta Business License
Number 03-49421,
With Attachment,
dated 2003 ..... 75a

Attachment:

Conditions and Stipulations
Regarding License Issued by the
City of Marietta to DIME ONE LLC
dated March 13, 2003..... 77a

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: October 25, 2004

Douglas R. Haynie
HAYNIE, LITCHFIELD & CRANE, P.C.
222 Washington Avenue
Marietta GA 30060

Case No. S04C1906

STARSHIP ENTERPRISES OF ATLANTA, INC., d/b/a STARSHIP et al. v. CITY OF MARIETTA et al.

COURT OF APPEALS CASE NO. A04D039B

This Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

_____
_____
_____
_____

Sherie M. Welch, Clerk

Court of Appeals
of the State of Georgia

ATLANTA, JULY 07, 2004

The Court of Appeals hereby passes the following order:

APPLICATION NO. A04D0398

1690 COBB L.L.C. D/B/A WATERPIPE WORLD, ET AL V. CITY OF MARIETTA

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

96034

031617834

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta

JULY 07 2004

I certify that the above is a true extract fromd the minutes of the Court of Appeals of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last above above written.

Clerk.

_____/s/_____

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

INSERECTION: A FANTASY STORE, AND DIME ONE, L.L.C., AND RALPH MEGGINSON, Petitioners, v. THE CITY OF MARIETTA, BILL DUNAWAY, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF MARIETTA BETTY L. HUNTER, PETE WALDREP, JOHNNY SINCLAIR, ANDY MORRIS, ANTHONY COLEMAN, JIM KING, AND PHILIP GOLDSTEIN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE MARIETTA CITY COUNCIL, Defendants.	:	CIVIL ACTION FILE NO. 03-1-6179-34

[ENTERED: MAY 14, 2004]

ORDER AFFIRMING THE ACTION OF THE MARIETTA CITY COUNCIL REVOKING THE LICENSE OF PETITIONERS

The above-styled case is before this court based upon Plaintiffs' Petition for Writ of Mandamus and Writ of Certiorari. By order dated January 29, 2004, the court set a special hearing in this matter on March 18, 2004. At that time, the court heard oral argument on Plaintiffs' petition and also heard oral argument on Defendants' Motion to Dismiss based upon mootness.

In issuing this order, the court has reviewed the pleadings, motions and documents in the record. In addition, the court has reviewed each item of evidence submitted at the hearing before the Marietta City Council on August 13, 2003 which resulted in the revocation of the license by the Marietta City Council.

Based upon the above review, the court orders the following regarding Plaintiffs' petition and Defendants' Motion to Dismiss as follows:

FINDINGS OF FACT

While the court deems that findings of fact and conclusions of law are not required to resolve the instant matter, the court nevertheless enter same as follows:

1.

The Plaintiffs' applied for and received a license from the City of Marietta. By its terms, the license expired December 31, 2003. The purpose of the license was for general merchandise, retail. The license is contained in the record and has attached to it certain

stipulations and conditions which were signed and agreed to by Plaintiffs.

2.

Agents of the Marietta Police Department purchased certain adult items in Plaintiffs' store on May 21, 2003 and May 28, 2003. Said items were entered into evidence at the hearing before the Marietta City Council and the hearing before the court on March 18, 2004.

3.

By notice dated June 13, 2003, the Business License Manager for the City of Marietta notified Plaintiffs that a hearing would be held on June 18, 2003 on whether or not to suspend or revoke Plaintiffs' license. Following the hearing held by the Business License Manager for the City of Marietta on June 18, 2003, the Business License Manager revoked the license of the Plaintiffs' in this case by decision dated June 23, 2003. The license was revoked in its entirety through December 31, 2003. Thereafter, Plaintiffs appealed the decision of the Business License Manager and the hearing was held, following proper notice, before the Marietta City Council on August 13, 2003. At such hearing, Plaintiffs were represented by counsel and the City Solicitor presented the case to the City of Marietta.

4.

Following the hearing on August 13, 2003, the Marietta City Council unanimously revoked the license of the Plaintiffs' through December 31, 2003.

5.

Thereafter, on August 15, 2003, Plaintiffs instituted this action seeking review of the decision of the Marietta City Council.

STANDARD OF REVIEW

It is a well established principle of Georgia law that the appropriate standard of review to be applied to issues of fact on writ of certiorari to the superior court is whether the decision of the governmental body was supported by any evidence. Emory Univ. v. Levitas, 260 Ga. 894, 898(1), 401 S.E.2d 691 (1991); Goldwire v. Clark, 234 Ga. App. 579, 581(1), 507 S.E.2d 209 (1998); City of Atlanta Government v. Smith, 228 Ga. App. 840, 843(1), 482 S.E.2d 466 (1997); City of Atlanta v. Bankhead Enterprises, Inc. et al., 224 Ga. App. 840, 843(1), 482 S.E.2d 466 (1997). Further, the decision of the City Council may be reversed or modified only if it "acted beyond the discretionary powers conferred upon it, abused its discretion, or acted arbitrarily or capriciously with regard to an individual's rights." Strickland v. Douglas County, 246 Ga. 640, 642(1), 272 S.E.2d 340 (1980). "The clearly erroneous standard of review to be applied by the superior court prevents a de novo determination of evidentiary questions leaving only a determination of

whether the facts found by the [governmental body] are supported by any evidence." Commr. of Ins. v. Stryker, 218 Ga. App. 716, 717(1), 463 S.E.2d 163 (1995).

The standard of review of any evidence places the superior court judge in the role of an appellate court, allowed only to review the evidence and not to retry or to rehear the case. "The superior court judge cannot substitute his [or her] judgment for that of the [governmental body] as to the weight of the evidence on questions of fact." Levitas at 260 Ga. 898, 4001 S.E.2d 695. The superior court is "bound by the acts presented to the local governing body or administrative agency." Id. Even the Court of Appeals when reviewing the decision of the superior court pursuant to writ of certiorari must review whether the record supports the initial decision of the local governing body or administrative agency, not whether the record supports the superior court's decision. Id. See also Goldwire v. Clark, 234 Ga. App. 579, 581(1), 507 S.E.2d 209 (1998); City of Atlanta Government v. Smith, 228 Ga. App. 840, 843(1), 482 S.E.2d 466 (1997) .

On writ of certiorari, the superior court applies the any evidence rule and reviews the evidence in the case as though it is an appellate court, deciding whether the record supports the decision of the governmental body.

CONCLUSIONS OF LAW

6.

After reviewing the record in its entirety, including the physical evidence (the so-called "sex toys"), this court finds that there was sufficient and substantial evidence before the Marietta City Council contained in the record on August 13, 2003 to support its decision to revoke the license of the Plaintiffs' through December 31, 2003.

7.

The court further finds that the record in this case, including the sex toys, shows that the Plaintiffs violated the written conditions attached to the license issued by the City of Marietta to the Plaintiffs, thus providing sufficient grounds, based upon sufficient and substantial evidence, for the Marietta City Council to revoke the license issued to the Plaintiffs through December 31, 2003.

8.

The court rejects the challenges contained in the record by the Plaintiffs. In rejecting said challenges, the court notes that the Marietta City Council and the Business License Manager for City of Marietta followed the proper procedure required under the Marietta City Code and, gave sufficient notice to the Plaintiff regarding the hearing and the matters to be considered at the hearing, both before the Business License Manager and the City Council. The court further finds

that the city gave proper notice to the proper party and that the sentence imposed by the Marietta City Council was both supported by the evidence and was proper under the Marietta City Code. Further, the court rejects the constitutional challenges by the Plaintiff in the record and finds same to be without merit.

9.

The constitutional challenges raised by the Plaintiffs in this matter have been ruled adversely to the Plaintiffs by the appellate courts of Georgia in the following cases: Sewell v. State, 238 Ga. 495, 233 S.E.2d 187 (1977); Chamblee Visuals, LLC v. City of Chamblee, 270 Ga. 33, 506 S.E.2d 113 (1998); Powell v. State, 270 Ga. 327, 510 S.E.2d 18 (1998); Morrison v. State, 272 Ga. 129, 526 S.E.2d 336 (2000).

10.

The court further finds that the Mandamus portion of the appeal is not applicable here because the Plaintiffs' remedy in this case is certiorari, not mandamus.

11.

Having reviewed the evidence and the matters listed herein, the court finds:

a) The sex toys and other evidence in this case violate the written conditions of the license.

b) The sex toys and other evidence in this case violate the adult entertainment code of the City of Marietta as referenced in the license.

c) The sex toys and other evidence in this case constitute an obscenity under O.C.G.A. §16-12-80(c) and that the sale of such items in unlawful under O.C.G.A. §16-12-80.

RULING ON DEFENDANTS' MOTION TO DISMISS

While the above matters resolve this case, the court deems it appropriate to rule on the city's Motion to Dismiss. The city's Motion is based upon the fact that the license, on its face, expires on December 31, 2003, which is also the date through which the City Council revoked same. The city did not have authority to revoke the license beyond December 31, 2003 because there was, in fact, no license to revoke beyond such date. The court grants the city's Motion to Dismiss based upon the following: Cook v. Harris, 209 Ga. 425, 73 S.E.2d 89 (1952); Stover v. City Council of Fairburn, 220 Ga. 670, 141 S.E.2d 399 (1965); Exley v. Blackmon, 129 Ga. App. 598, 200 S.E.2d 334 (1973); Members of the Board of Commissioners of Whitfield County v. Golden Gallon, Inc., 244 Ga. 209, 259 S.E.2d 463 (1979).

CONCLUSION

For the reasons stated above, it is hereby ordered, adjudged and decreed that the Marietta City Council's decision to revoke the license of Plaintiff is

hereby affirmed in its entirety and the Plaintiffs' petition is hereby denied. In addition, the court grants the Motion to Dismiss filed by the City of Marietta in this case.

SO ORDERED, this 12 day of May, 2004.

_____/s/_____
Judge S. Lark Ingram
Cobb Superior Court
Cobb Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that I have this day mailed (through the United States Postal System) a copy of the foregoing document to the following, to wit:

Alan I. Begner, Esq.
Cory G. Begner, Esq.
Begner & Begner, P.C.
1280 West Peachtree Street
Suite 230
Atlanta, Georgia 30309

Douglas R. Haynie, Esq.
Haynie, Litchfield & Crane, P.C.
222 Washington Avenue
Marietta, Georgia 30060

This 13 day of May, 2004.

_____/s/_____
Debbie Smith, Judicial
Administrative Assistant to
Judge S. Lark Ingram

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

1690 COBB, L.L.C. d/b/a INSERECTION: WATERPIPE WORLD And ERIK CLABAUGH	:	
Petitioners,	:	CIVIL ACTION FILE NO. 03-1-6177-34
v.	:	
THE CITY OF MARIETTA, BILL DUNAWAY, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF MARIETTA BETTY L. HUNTER, PETE WALDREP, - JOHNNY SINCLAIR, ANDY MORRIS, ANTHONY COLEMAN, JIM KING, AND PHILIP GOLDSTEIN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE MARIETTA CITY COUNCIL,	:	
Defendants.	:	

[ENTERED: MAY 12, 2004]

ORDER AFFIRMING THE ACTION OF THE MARIETTA CITY COUNCIL REVOKING THE LICENSE OF PETITIONERS

The above-styled case is before this court based upon Plaintiffs' Petition for Writ of Mandamus and Writ of Certiorari. By order dated January 29, 2004, the court set a special hearing in this matter on March 18, 2004. At that time, the court heard oral argument on Plaintiffs' petition and also heard oral argument on Defendants' Motion to Dismiss based upon mootness.

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CONCLUSION

For the reasons stated above, it is hereby ordered, adjudged and decreed that the Marietta City Council's decision to revoke the license of Plaintiff is

hereby affirmed in its entirety and the Plaintiffs' petition is hereby denied. In addition, the court grants the Motion to Dismiss filed by the City of Marietta in this case.

SO ORDERED, this 12 day of May, 2004.

_____/s/_____
Judge S. Lark Ingram
Cobb Superior Court
Cobb Judicial Circuit

HAYNIE, LITCHFIELD & CRANE, P.C.
ATTORNEYS AT LAW
222 WASHINGTON AVENUE
MARIETTA, GEORGIA 30060

October 27, 2004

Mr. Alan I. Begner
Begner & Begner, P.C.
1280 West Peachtree Street NW
Suite 230
Atlanta, GA 30309

Via Regular Mail and Facsimile

RE: 1690 Cobb LLC d/b/a Waterpipe World, et al. v. City of Marietta, et al., and

Starship Enterprises of Atlanta, Inc., d/b/x Starship et al. v. City of Marietta et al., and

Inserection, A Fantasy Store, et al. v. City of Marietta, et al.

Supreme Court Case No. S04C1906

Dear Alan:

This letter will confirm that the Supreme Court, on October 25, 2004 denied the Petition for Certiorari on behalf of your three clients above. In case you have not received the ruling, I am attaching same with this letter.

The purpose of this letter is to give your clients until 9:00 a.m. on Monday, November 1, 2004 to cease all operations within the City of Marietta. After that time, the city will enforce the license revocation through the courts and through law enforcement.

While the city realizes that your clients may file a motion for reconsideration, it is believed that such motion would be without merit and that there is little likelihood that the Supreme Court would reverse itself, reverse the Court of Appeals or reverse Judge Lark Ingram in this matter.

With kindest regards.

Sincerely,

_____/s/_____
Douglas R. Haynie

tl

encl.

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

1690 COBB, L.L.C. d/b/a INSERECTION: WATERPIPE WORLD, and ERIK CLABAUGH,	)
Petitioners,	)
v.	)
THE CITY OF MARIETTA, BILL DUNAWAY, in his official capacity as Mayor of the City of Marietta, BETTY L. HUNTER, PETE WALDREP, JOHNNY SINCLAIR, ANDY MORRIS, ANTHONY COLEMAN, JIM KING, and PHILIP GOLDSTEIN, in their official capacities as members of the Marietta City Council,	)
Respondents/Defendants.	)

031-6177-34

[ENTERED: AUGUST 15, 2003]

PETITION FOR WRIT OF MANDAMUS AND WRIT OF CERTIORARI

COME NOW, Petitioners 1690 COBB, L.L.C. d/b/a INSERECTION: WATERPIPE WORLD and ERIK CLABAUGH ("Petitioners"), through undersigned counsel, who, pursuant to O.C.G.A. §5-4-1,

et seq., make this application for the issuance of a writ of mandamus and a writ of certiorari by the Superior Court to THE CITY OF MARIETTA, BILL DUNAWAY, in his official capacity as Mayor of the City of Marietta, BETTY L. HUNTER, PETE WALDREP, JOHNNY SINCLAIR, ANDY MORRIS, ANTHONY COLEMAN, JIM KING, and PHILIP GOLDSTEIN in their official capacities as members of the Marietta City Council, ("Respondents/Defendants") and state as follows:

Jurisdiction and Venue

1.

Petitioner 1690 Cobb, L.L.C. d/b/a Inserection: Waterpipe World is a properly organized Georgia Limited Liability Company, who operates a properly licensed general retail store at 1690 Cobb Parkway South, Marietta, Cobb County, Georgia.

2.

Petitioner Erik Clabaugh is the agent of the applicant 1690 Cobb, L.L.C.

3.

Respondent/Defendant City of Marietta, Georgia is a municipal corporation, located in Georgia, created and existing under the laws of the State of Georgia. Respondent/Defendant City of Marietta may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor,

Marietta, Georgia, or designated representative, and is subject to the jurisdiction and venue of this Court.

4.

Respondent/Defendant Bill Dunaway is the Mayor of the City of Marietta. Respondent/Defendant Dunaway may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Dunaway is therefore subject to the jurisdiction and venue of this court.

5.

Respondent/Defendant Betty L. Hunter is a member of the Marietta City Council. Respondent/Defendant Hunter may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Hunter is therefore subject to the jurisdiction and venue of this court.

6.

Respondent/Defendant Pete Waldrep is a member of the Marietta City Council. Respondent/Defendant Waldrep may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative.

Respondent/Defendant Waldrep is therefore subject to the jurisdiction and venue of this court.

7.

Respondent/Defendant Johnny Sinclair is a member of the Marietta City Council. Respondent/Defendant Sinclair may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Sinclair is therefore subject to the jurisdiction and venue of this court.

8.

Respondent/Defendant Andy Morris is a member of the Marietta City Council. Respondent/Defendant Morris may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Morris is therefore subject to the jurisdiction and venue of this court.

9.

Respondent/Defendant Anthony Coleman is a member of the Marietta City Council. Respondent/Defendant Coleman may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative.

Respondent/Defendant Coleman is therefore subject to the jurisdiction and venue of this court.

10.

Respondent/Defendant Jim King is a member of the Marietta City Council. Respondent/Defendant King may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant King is therefore subject to the jurisdiction and venue of this court.

11.

Respondent/Defendant Philip Goldstein is a member of the Marietta City Council. Respondent/Defendant Goldstein may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Goldstein is therefore subject to the jurisdiction and venue of this court.

Facts

12.

Petitioners own and operate a properly licensed general retail store at 1690 Cobb Parkway South, Marietta, Cobb County, Georgia, which sells novelties, tobacco accessories, and some adult material.

13.

Petitioners were issued, all required licenses for their business, including a valid business license, which was issued by the City of Marietta Business Licensing Department.

14.

On or about June 13th 2003, Respondents sent Petitioners' manager a show cause letter informing them that a hearing would take place on the issue of whether or not to suspend or revoke Petitioners' Marietta Business License. Exhibit A.

15.

Following a July 18th 2003 hearing, Respondents sent Petitioners another letter dated June 23rd 2003. This letter served as notice of revocation of Petitioners' Marietta Business License. Exhibit B.

16.

Petitioners appealed the revocation on July 1st 2003. Exhibit C.

17.

On August 13th 2003, Petitioners appeared before the Marietta City Council to appeal the revocation of their business license.

18.

On August 13th 2003, Respondents denied Petitioners' appeal, and stated that the business license revocation would go into effect Friday, August 15 2003.

Errors of Law

19.

Respondents' show cause letter of June 13th 2003 was Constitutionally defective in violation of Article I, Section I, Paragraph I (Due Process) of the Georgia Constitution and the Fourteenth Amendment of the United States Constitution, because it failed to put the license holder on notice as to the charges against it.

20.

Respondents violated City of Marietta Code Section 8-4-405 (A) (revocation and appeal) because the charges against Petitioners lacked a specific violation or violations.

21.

Respondents violated City of Marietta Code Section 8-4-405 (A) (revocation and appeal) because said section requires that a show cause letter be served upon the license holder, instead Respondents served the show cause letter on the acting manager of Petitioners' store.

22.

Respondents violated City of Marietta Code Section 8-4-405 (B) because the show cause letter of June 13th 2003 did not contain sufficient grounds upon which to revoke a license.

23.

Respondents violated City of Marietta Code Section 8-4-430 by failing to cite and convict Petitioners before the Marietta Municipal Court for alleged violations as a condition precedent to revocation.

24.

Respondents violated City of Marietta Code Section 8-4-405 (D) because this Code section limits the discipline permitted for the alleged violations to no more than a 90 day suspension of the license, for a first offense.

25.

O.C.G.A. 16-12-80 (C) in unconstitutional in violation of the substantive Due Process rights to privacy and liberty, as guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph I of the Georgia Constitution. *Lawrence* v. Texas, 123 S. Ct. 2472, 2475 (2003),; *Williams* v. *Pryor* 220 F.Supp.2d 1257 (N.D. Ala. 2002).

WHEREFORE, Petitioners request that this Court grant the following relief:

(a) that the Court sanction a Writ of Certiorari in the manner provided by law;

(b) that this Court overturn and set aside the decision of Respondents;

(c) that this Court issue a writ of mandamus ordering Respondents to return and reinstate Petitioners' City of Marietta Business License for the property at 1690 Cobb Parkway South, Marietta, Cobb County, Georgia;

(d) for such other relief this Court deems appropriate.

This 15th day of August, 2003.

Respectfully submitted,

_____/s/_____
ALAN BEGNER
GA BAR NO. 046975

_____/s/_____
ERIC JENSEN
GA BAR NO. 391259

Begner & Begner, P.C.
1280 West Peachtree Street
Suite 230
Atlanta, Georgia 30309
404-872-5727

EXHIBIT
A

BUSINESS LICENSE
205 Lawrence Street
P.O. Box 609
Marietta, Georgia 30061

6/13/03 12:2
Perfected by
delivery to
Brian Hall
(Manager)

Phone (770) 794-5520
Fax (770) 794-5685
http://www.city.marietta.ga.us

June 13, 2003

VIA HAND DELIVERY

Mr. Erik Clabaugh
1690 COBB LLC
d/b/a Inserection Water Pipe World
1739 Cheshire Bridge Rd., N.E.
Atlanta, GA 30324-4921

Re: License Number 03-41832 issued to 1690 COBB LLC d/b/a Inserection Water Pipe World, 1690 Cobb Parkway South, Marietta, Georgia

Dear Mr. Clabaugh:

You are hereby given notice that the Business License Manager of the City of Marietta will hold a hearing on whether or not to suspend or revoke the above license issued by the City of Marietta. The hearing will be on Wednesday, June 18, 2003 in the Marietta City Council chambers at 10:30 a.m. This letter shall constitute written notice of the time and place of the hearing.

The basis for the hearing on whether to suspend or revoke the above license is set forth in Marietta City Code Section 8-4-405(B)(3) which provides as follows:

"An applicant has knowingly allowed the violation of an ordinance of the city or a violation of any criminal law of the State of Georgia (a misdemeanor or a felony) to occur on the premises; and that such violation is materially related to the operation of said business."

Sincerely,

_____/s/_____
Scott Everingham
Business License Manager

cc: Mr. William J. Bruton, Jr., City Manager
Chief Bobby D. Moody, Marietta Police Department
Mr. Douglas R. Haynie, City Attorney
Mr. Robert I. Donovan, City Solicitor

EXHIBIT
B

BUSINESS LICENSE
205 Lawrence Street
P.O. Box 609
Marietta, Georgia 30061

Phone (770) 794-5520
Fax (770) 794-5685
http://www.city.marietta.ga.us

June 23, 2003

Mr. Erik Clabaugh
1690 COBB LLC
d/b/a Inserection Water Pipe World
1739 Cheshire Bridge Rd., N.E.
Atlanta, GA 30324-4921

Re: License Number 03-41832 issued to 1690 COBB LLC d/b/a Inserection Water Pipe World, 1690 Cobb Parkway South, Marietta, Georgia

Dear Mr. Clabaugh:

The Business License Manager of the City of Marietta held a hearing regarding the above license on Wednesday, June 18, 2003 pursuant to the notice delivered to the licensee on June 13, 2003, a copy of which is attached. The purpose of the hearing, as set

forth in the notice of the hearing and the Marietta City Code, was to determine whether to suspend or revoke the occupation tax certificate or any other license issued to the licensee by the City of Marietta. The hearing was conducted in accordance with the Marietta City Code and in particular, Code Section 8-4-405. The license at issue in this matter is attached. Notice of the hearing was hand delivered to the licensee on June 13, 2003 and was delivered to Mr. Brian Hall, Manager.

The following attorneys participated in the hearing as follows: Mr. Robert Donovan presented evidence on behalf of the Marietta Police Department; Mr. Alan Begner presented argument on behalf of the above licensee and represented the licensee at the hearing; City attorney Doug Haynie assisted the Business License Manager in this matter. By agreement of the parties, the hearings were consolidated for the purpose of this hearing. A court reporter employed by Mr. Begner recorded the proceedings.

In issuing this ruling, I have considered the arguments presented by the attorney for the licensees, all evidence presented at the hearing and the testimony given during the hearing. In addition, I have considered the severity of the allegations, the evidence submitted and the testimony presented and have considered all other matters required by City Code Section 8-4-405.

Prior to the notice of the hearing given to the licensee on June 13, 2003, the City Manager gave approval for the Business License Manager to proceed with notice and hearing in this matter.

As part of the review of the evidence in this matter, the Business License Manager has reviewed the Business License/Occupation Tax Certificate, attached, including the conditions and stipulations attached thereto.

Based upon the advice of the city attorney, the motions made by the attorney for the licensee and the legal issues raised are denied and found to be without merit.

Based upon the above, and based upon the review of the items introduced into evidence in the hearing on June 18, 2003 and the testimony presented, I hereby find that evidence presented and the sale of the items introduced into evidence upon and within the premises licensed pursuant to the attached license constitute a violation of the conditions and stipulations attached to the license and that same constitute a violation of the ordinances of the City of Marietta, including the adult entertainment ordinance of the City of Marietta as referenced in Paragraph 6 of the conditions and stipulations attached to the license. In addition, I find that the evidence and the sale of the items introduced into evidence upon and within the licensed premises constitute a violation of the criminal laws of the State of Georgia, including O.C.G.A. §16-

12-80(c). I further find that the above violations are materially related to the operation of the business of the licensee.

Based upon the above and based upon my review and consideration of all evidence and testimony submitted in the above matter, as well as the severity of the allegations, I hereby revoke, in its entirety, license number 03-41832 effective today's date, June 23, 2003. Subject to appeal, the revocation shall commence today, June 23, 2003 and continue through the date of expiration of the license, December 31, 2003. Based upon this ruling and the revocation of such license, all sales, pending appeal, must immediately cease and desist and the licensee shall surrender the attached license to the Business License Manager of the City of Marietta at the expiration of the ten (10) day appeal period. In the event the licensee desires to appeal this decision, same shall be done within ten (10) days pursuant to Code Section 8-4-405.

Sincerely,

_____/s/_____
Scott Everingham
Business License Manager

cc: Mr. William F. Bruton, Jr., City Manager
Chief Bobby D. Moody, Marietta Police Department
Mr. Douglas R. Haynie, City Attorney (Via Facsimile No. 770-424-8900)
Mr. Robert I. Donovan, City Solicitor (Via Facsimile No. 770-427-9891)
Mr. Alan I. Begner (Via Facsimile No. 404-872-5763)

Attachments: Notice of hearing dated June 13, 2003
License Number 03-41832

EXHIBIT
C

Begner & Begner, P.C.
Attorneys at Law

Alan I. Begner
Cory G. Begner
Eric L. Jensen
Katie Wood

1280 West Peachtree Street
Suite 230
Atlanta, Georgia 30309

July 1, 2003

VIA HAND DELIVERY
Mayor and Council
City of Marietta
205 Lawrence Street
Marietta, Georgia 30061

Re: License Number 03-41832 issued to 1690 COBB L.L.C. d/b/a Inserection Water Pipe World, 1690 Cobb Parkway South, Marietta, Georgia

Pursuant to Section 8-4-405 of the Marietta City Code, the above license holder hereby appeals the June 23, 2003 decision of the Business License Manager to revoke all licenses issued to this applicant at the above location.

Yours very sincerely,

_____/s/_____
Alan I. Begner

AIB/kdc
BC: Scott Everingham

Telephone: 404-872-5727 * Fax: 404-872-5763 *
e-mail: abegner@mindspring.com

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

INSERECTION: A FANTASY STORE, and DIME ONE, L.L.C., and RALPH MEGGINSON	)	
Petitioners,	)	CIVIL ACTION
v.	)	FILE NO. _____
THE CITY OF MARIETTA, BILL DUNAWAY, in his official capacity as mayor of the City of Marietta BETTY L. HUNTER, PETE WALDREP, JOHNNY SINCLAIR, ANDY MORRIS, ANTHONY COLEMAN, JIM KING, and, PHILIP GOLDSTEIN, in their official capacities as members of the Marietta City Council,	)	
Respondents/Defendants.	)	

[ENTERED: AUGUST 15, 2003]

PETITION FOR WRIT OF MANDAMUS AND WRIT OF CERTIORARI

COME NOW, Inserection: A Fantasy Store, Dime One, L.L.C., and Ralph Megginson (Petitioners) and pursuant to O.C.G.A. §5-4-1, et seq., make this application for the issuance of a writ of mandamus and a writ of certiorari by the Superior Court to the City of Marietta and Bill Dunaway, in his official capacity as mayor of the City of Marietta, and Betty L. Hunter, Pete Waldrep, Johnny Sinclair, Andy Morris, Anthony Coleman, Jim King, and Philip Goldstein, in their official capacities as members of the Marietta City Council, and state as follows:

Jurisdiction and Venue

1.

Petitioner Dime One, L.L.C. d/b/a Inserection: A Fantasy Store is a properly organized Georgia Limited Liability Company, who operates a properly licensed general retail store at 63 Cobb Parkway North, Marietta, Cobb County, Georgia.

2.

Petitioner Ralph Megginon is the agent of the applicant Dime One, L.L.C.

3.

Respondent/Defendant City of Marietta, Georgia is a municipal corporation, located in Georgia, created and existing under the laws of the State of Georgia. Respondent/Defendant City of Marietta may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or

designated representative, and is subject to the jurisdiction and venue of this Court.

4.

Respondent/Defendant Bill Dunaway is the Mayor of the City of Marietta. Respondent/Defendant Dunaway may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Dunaway is therefore subject to the jurisdiction and venue of this court.

5.

Respondent/Defendant Betty L. Hunter is a member of the Marietta City Council. Respondent/Defendant Hunter may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Hunter is therefore subject to the jurisdiction and venue of this court.

6.

Respondent/Defendant Pete Waldrep is a member of the Marietta City Council Respondent/Defendant Waldrep may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Waldrep is therefore subject to the jurisdiction and venue of this court.

7.

Respondent/Defendant Johnny Sinclair is a member of the Marietta City Council. Respondent/Defendant Sinclair may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Sinclair is therefore subject to the jurisdiction and venue of this court.

8.

Respondent/Defendant Andy Morris is a member of the Marietta City Council. Respondent/Defendant Morris may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Morris is therefore subject to the jurisdiction and venue of this court.

9.

Respondent/Defendant Anthony Coleman is a member of the Marietta City Council. Respondent/Defendant Coleman may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Coleman is therefore subject to the jurisdiction and venue of this court.

10.

Respondent/Defendant Jim King is a member of the Marietta City Council. Respondent/Defendant King may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant King is therefore subject to the jurisdiction and venue of this court.

11.

Respondent/Defendant Philip Goldstein is a member of the Marietta City Council. Respondent/Defendant Goldstein may be served through City of Marietta Risk Manager Dennis Stover at 205 Lawrence Street, 3rd Floor, Marietta, Georgia, or other designated representative. Respondent/Defendant Goldstein is therefore subject to the jurisdiction and venue of this court.

Facts

12.

Petitioners own and operate a properly licensed general retail store at 63 Cobb Parkway North, Marietta, Cobb County, Georgia, which sells novelties, tobacco accessories, and some adult material.

13.

Petitioners were issued all required licenses for their business, including a valid business license, which was issued by the City of Marietta Business Licensing Department.

14.

On or about June 13th 2003, Respondents sent Petitioners' manager a show cause letter informing them that a hearing would take place on the issue of whether or not to suspend or revoke Petitioners' Marietta Business License. Exhibit A.

15.

Following a July 18th 2003 hearing, Respondents sent Petitioners another letter dated June 23rd 2003. This letter served as notice of revocation of Petitioners' Marietta Business License. Exhibit B.

16.

Petitioners appealed the revocation on July 1st 2003. Exhibit C.

17.

On August 13th 2003, Petitioners appeared before the Marietta City Council to appeal the revocation of their business license.

18.

On August 13th 2003, Respondents denied Petitioners' appeal, and stated that the business license revocation would go into effect Friday, August 15th 2003.

Errors of Law

19.

Respondents' show cause letter of June 13th 2003 was Constitutionally defective in violation of Article I, Section I, Paragraph I (Due Process) of the Georgia Constitution and the Fourteenth Amendment of the United States Constitution, because it failed to put the license holder on notice as to the charges against it.

20.

Respondents violated City of Marietta Code Section 8-4-405 (A) (revocation and appeal) because the charges against Petitioners lacked a specific violation or violations.

21.

Respondents violated City of Marietta Code Section 8-4-405 (A) (revocation and appeal) because said section requires that a show cause letter be served upon the license holder, instead Respondents served the show cause letter on the acting manager of Petitioners' store.

22.

Respondents violated City of Marietta Code Section 8-4-405 (B) because the show cause letter of June 13th 2003 did not contain sufficient grounds upon which to revoke a license.

23.

Respondents violated City of Marietta Code Section 8-4-430 by failing to cite and convict Petitioners before the Marietta Municipal Court for alleged violations as a condition precedent to revocation.

24.

Respondents violated City of Marietta Code Section 8-4-405 (D) because this Code section limits the discipline permitted for the alleged violations to no more than a 90 day suspension of the license, for a first offense.

25.

O.C.G.A. 16-12-80 (C) in unconstitutional in violation of the substantive Due Process rights to privacy and liberty, as guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section I, Paragraph I of the Georgia Constitution. *Lawrence v. Texas,* 123 S. Ct. 2472, 2475 (2003),; *Williams v. Pryor* 220 F.Supp.2d 1257 (N.D. Ala. 2002).

WHEREFORE, Petitioners request that this Court grant the following relief:

(a) that the Court sanction a Writ of Certiorari in the manner provided by law;

(b) that this Court overturn and set aside the decision of Respondents;

(c) that this Court issue a writ of mandamus ordering Respondents to return and reinstate Petitioners' City of Marietta Business License for the property at 63 Cobb Parkway North, Marietta, Cobb County, Georgia;

(d) for such other relief this Court deems appropriate.

This 15th day of August, 2003.

Respectfully submitted,

_____/s/_____
ALAN BEGNER
GA BAR NO. 046975

_____/s/_____
ERIC JENSEN
GA BAR NO. 391259

Begner & Begner, P.C.
1280 West Peachtree Street
Suite 230
Atlanta, Georgia 30309
404-872-5727

EXHIBIT
A

BUSINESS LICENSE
205 Lawrence Street
P.O. Box 609
Marietta, Georgia 30061

6/13/03
Perfected by
Delivery to
Nicki Strong
(Manager)

Phone (770) 794-5520
Fax (770) 794-5685
http://www.city.marietta.ga.us

June 13, 2003

VIA HAND DELIVERY

Mr. Ralph Megginson
DIME ONE LLC d/b/a
Inserection A Fantasy Store
1739 Cheshire Bridge Rd., N.E.
Atlanta, GA 30324-4921

Re: License Number 03-49421 issued to DIME ONE LLC d/b/a Inserection A Fantasy Store, 63 Cobb Parkway North, Marietta, Georgia

Dear Mr. Megginson:

You are hereby given notice that the Business License Manager of the City of Marietta will hold a hearing on whether or not to suspend or revoke the above license issued by the City of Marietta. The hearing will be on Wednesday, June 18, 2003 in the Marietta City Council chambers at 9:00 a.m. This letter shall constitute written notice of the time and place of the hearing.

The basis for the hearing on whether to suspend or revoke the above license is set forth in Marietta City Code Section 8-4-405(B)(3) which provides as follows:

"An applicant has knowingly allowed the violation of an ordinance of the city or a violation of any criminal law of the State of Georgia (a misdemeanor or a felony) to occur on the premises; and that such violation is materially related to the operation of said business."

Sincerely,

_____/s/_____
Scott Everingham
Business License Manager

cc: Mr. William J. Bruton, Jr., City Manager
Chief Bobby D. Moody, Marietta Police Department
Mr. Douglas R. Haynie, City Attorney
Mr. Robert I. Donovan, City Solicitor

EXHIBIT
B

BUSINESS LICENSE
205 Lawrence Street
P.O. Box 609
Marietta, Georgia 30061

Phone (770) 794-5520
Fax (770) 794-5685
http://www.city.marietta.ga.us

June 23, 2003

Mr. Ralph Megginson
DIME ONE LLC d/b/a
Inserection A Fantasy Store
1739 Cheshire Bridge Rd., N.E.
Atlanta, GA 30324-4921

Re: License Number 03-49421 issued to DIME ONE LLC d/b/a Inserection A Fantasy Store, 63 Cobb Parkway North, Marietta, Georgia

Dear Mr. Megginson:

The Business License Manager of the City of Marietta held a hearing regarding the above license on Wednesday, June 18, 2003 pursuant to the notice delivered to the licensee on June 13, 2003, a copy of

which is attached. The purpose of the hearing, as set forth in the notice of the hearing and the Marietta City Code, was to determine whether to suspend or revoke the occupation tax certificate or any other license issued to the licensee by the City of Marietta. The hearing was conducted in accordance with the Marietta City Code and in particular, Code Section 8-4-405. The license at issue in this matter is attached. Notice of the hearing was hand delivered to the licensee on June 13, 2003 and was delivered to Ms. Nicki Strong, Manager.

The following attorneys participated in the hearing as follows: Mr. Robert Donovan presented evidence on behalf of the Marietta Police Department; Mr. Alan Begner presented argument on behalf of the above licensee and represented the licensee at the hearing; City attorney Doug Haynie assisted the Business License Manager in this matter. By agreement of the parties, the hearings were consolidated for the purpose of this hearing. A court reporter employed by Mr. Begner recorded the proceedings.

In issuing this ruling, I have considered the arguments presented by the attorney for the licensees, all evidence presented at the hearing and the testimony given during the hearing. In addition, I have considered the severity of the allegations, the evidence submitted and the testimony presented and have considered all other matters required by City Code Section 8-4-405.

Prior to the notice of the hearing given to the licensee on June 13, 2003, the City Manager gave approval for

the Business License Manager to proceed with notice and hearing in this matter.

As part of the review of the evidence in this matter, the Business License Manager has reviewed the Business License/Occupation Tax Certificate, attached, including the conditions and stipulations attached thereto.

Based upon the advice of the city attorney, the motions made by the attorney for the licensee and the legal issues raised are denied and found to be without merit.

Based upon the above, and based upon the review of the items introduced into evidence in the hearing on June 18, 2003 and the testimony presented, I hereby find that evidence presented and the sale of the items introduced into evidence upon and within the premises licensed pursuant to the attached license constitute a violation of the conditions and stipulations attached to the license and that same constitute a violation of the ordinances of the City of Marietta, including the adult entertainment ordinance of the City of Marietta as referenced in Paragraph 6 of the conditions and stipulations attached to the license. In addition, I find that the evidence and the sale of the items introduced into evidence upon and within the licensed premises constitute a violation of the criminal laws of the State of Georgia, including O.C.G.A. §16-12-80(c). I further find that the above violations are materially related to the operation of the business of the licensee.

Based upon the above and based upon my review and consideration of all evidence and testimony submitted in the above matter, as well as the severity of the allegations, I hereby revoke, in its entirety, license number 03-49421 effective today's date, June 23, 2003. Subject to appeal, the revocation shall commence today, June 23, 2003 and continue through the date of expiration of the license, December 31, 2003. Based upon this ruling and the revocation of such license, all sales, pending appeal, must immediately cease and desist and the licensee shall surrender the attached license to the Business License Manager of the City of Marietta at the expiration of the ten (10) day appeal period. In the event the licensee desires to appeal this decision, same shall be done within ten (10) days pursuant to Code Section 8-4-405.

Sincerely,

_____/s/_____
Scott Everingham
Business License Manager

cc: Mr. William F. Bruton, Jr., City Manager
Chief Bobby D. Moody, Marietta Police Department
Mr. Douglas R. Haynie, City Attorney (Via Facsimile No. 770-424-8900)
Mr. Robert I. Donovan, City Solicitor (Via Facsimile No. 770-427-9891)
Mr. Alan I. Begner (Via Facsimile No. 404-872-5763)

Attachments: Notice of hearing dated June 13, 2003
License Number 03-49421

EXHIBIT
C

Begner & Begner, P.C.
Attorneys at Law

Alan I. Begner
Cory G. Begner
Eric L. Jensen
Katie Wood

1280 West Peachtree Street
Suite 230
Atlanta, Georgia 30309

July 1, 2003

VIA HAND DELIVERY
Mayor and Council
City of Marietta
205 Lawrence Street
Marietta, Georgia 30061

Re: License Number 03-49421 issued to DIME ONE L.L.C. d/b/a Inserection A Fantasy Store, 63 Cobb Parkway North, Marietta, Georgia

Pursuant to Section 8-4-405 of the Marietta City Code, the above license holder hereby appeals the June 23, 2003 decision of the Business License Manager to revoke all licenses issued to this applicant at the above location.

Yours very sincerely,

_____/s/_____
Alan I. Begner

AIB/kdc
BC: Scott Everingham

Telephone: 404-872-5727 * Fax: 404-872-5763 *
e-mail: abegner@mindspring.com

BUSINESS LICENSE
205 Lawrence Street
P.O. Box 609
Marietta, Georgia 30061

Phone (770) 794-5520
Fax (770) 794-5685
http://www.city.marietta.ga.us

June 23, 2003

Mr. Erik Clabaugh
1690 COBB LLC
d/b/a Inserection Water Pipe World
1739 Cheshire Bridge Rd., N.E.
Atlanta, GA 30324-4921

Re: License Number 03-41832 issued to 1690 COBB LLC d/b/a Inserection Water Pipe World, 1690 Cobb Parkway South, Marietta, Georgia

Dear Mr. Clabaugh:

The Business License Manager of the City of Marietta held a hearing regarding the above license on Wednesday, June 18, 2003 pursuant to the notice delivered to the licensee on June 13, 2003, a copy of which is attached. The purpose of the hearing, as set forth in the notice of the hearing and the Marietta City Code, was to determine whether to suspend or revoke the occupation tax certificate or any other license

issued to the licensee by the City of Marietta. The hearing was conducted in accordance with the Marietta City Code and in particular, Code Section 8-4-405. The license at issue in this matter is attached. Notice of the hearing was hand delivered to the licensee on June 13, 2003 and was delivered to Mr. Brian Hall, Manager.

The following attorneys participated in the hearing as follows: Mr. Robert Donovan presented evidence on behalf of the Marietta Police Department; Mr. Alan Begner presented argument on behalf of the above licensee and represented the licensee at the hearing; City attorney Doug Haynie assisted the Business License Manager in this matter. By agreement of the parties, the hearings were consolidated for the purpose of this hearing. A court reporter employed by Mr. Begner recorded the proceedings.

In issuing this ruling, I have considered the arguments presented by the attorney for the licensees, all evidence presented at the hearing and the testimony given during the hearing. In addition, I have considered the severity of the allegations, the evidence submitted and the testimony presented and have considered all other matters required by City Code Section 8-4-405.

Prior to the notice of the hearing given to the licensee on June 13, 2003, the City Manager gave approval for the Business License Manager to proceed with notice and hearing in this matter.

As part of the review of the evidence in this matter, the Business License Manager has reviewed the Business License/Occupation Tax Certificate, attached, including the conditions and stipulations attached thereto.

Based upon the advice of the city attorney, the motions made by the attorney for the licensee and the legal issues raised are denied and found to be without merit.

Based upon the above, and based upon the review of the items introduced into evidence in the hearing on June 18, 2003 and the testimony presented, I hereby find that evidence presented and the sale of the items introduced into evidence upon and within the premises licensed pursuant to the attached license constitute a violation of the conditions and stipulations attached to the license and that same constitute a violation of the ordinances of the City of Marietta, including the adult entertainment ordinance of the City of Marietta as referenced in Paragraph 6 of the conditions and stipulations attached to the license. In addition; I find that the evidence and the sale of the items introduced into evidence upon and within the licensed premises constitute a violation of the criminal laws of the State of Georgia, including O.C.G.A. §16-12-80(c). I further find that the above violations are materially related to the operation of the business of the licensee.

Based upon the above and based upon my review and consideration of all evidence and testimony submitted in the above matter, as well as the severity

of the allegations, I hereby revoke, in its entirety, license number 03-41832 effective today's date, June 23, 2003. Subject to appeal, the revocation shall commence today, June 23, 2003 and continue through the date of expiration of the license, December 31, 2003. Based upon this ruling and the revocation of such license, all sales, pending appeal, must immediately cease and desist and the licensee shall surrender the attached license to the Business License Manager of the City of Marietta at the expiration of the ten (10) day appeal period. In the event the licensee desire [ ] decision, same shall be done within ten (10) days pursuant to Code Section 8-4- [ ]

Sincerely,

_____/s/_____
Scott Everingham
Business License Manager

cc: Mr. William F. Bruton, Jr., City Manager
Chief Bobby D. Moody, Marietta Police Department
Mr. Douglas R. Haynie, City Attorney (Via Facsimile No. 770-424-8900)
Mr. Robert I. Donovan, City Solicitor (Via Facsimile No. 770-427-9891)
Mr. Alan I. Begner (Via Facsimile No. 404-872-5763)

Attachments: Notice of hearing dated June 13, 2003
License Number 03-41832

City of Marietta Business License and Revenue Division
205 LAWRENCE ST NE * DRAWER 609 *
MARIETTA GA 30061
(770) 794-5520

BUSINESS LICENSE/OCCUPATION
TAX CERTIFICATE
PLEASE DISPLAY AT ALL TIMES
SUBJECT TO ALL ORDINANCES OF
MAYOR AND COUNCIL

NOT TRANSFERABLE

ACCOUNT NUMBER 9911826 5993000

NUMBER 03-41832

INSERSECTION WATER PIPE WORLD
ATTN KEN TORBUSH
1739 CHESHIRE BRIDGE RD NE
ATLANTA GA 30324-4921

FOR YEAR	2003
EXPIRATION DATE	12/31/03
BEGIN OPERATION DATE	3/05/99

NOTIFY THIS OFFICE OF ANY CHANGE OF ADDRESS, OWNERSHIP FIRM NAME, OR CLASSIFICATION

OWNER 1690 COBB LLC

DESCRIPTION OF SIC CODE

CIGAR AND TOBACCO STORES

$284.00

CLASS 2B

BUSINESS ADDRESS:
1690 COBB PKWY S D
MARIETTA GA 30062-3782

THIS LICENSE IS SUBJECT TO THE CONDITIONS AND STIPULATIONS WHICH ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. LICENSE NOT VALID WITHOUT ATTACHED CONDITIONS AND STIPULATIONS.

TAX	$	284.00
PENALTY	$	.00
TOTAL	$	284.00
DATE PAID		4/01/03

SIGNED _____/s/_____
SCOTT EVERINGHAM

CONDITIONS AND STIPULATIONS REGARDING LICENSE ISSUED BY THE CITY OF MARIETTA TO 1690 COBB LLC

The following additional stipulations are attached to any license which may be issued by the City of Marietta to 1690 Cobb LLC and are incorporated by reference into the license and are considered a part of the license as follows:

1.

1690 Cobb LLC (hereinafter "licensee") shall supply to the City of Marietta no later than February 1, 2000, a statement of income and expenses for the license period ending December 31, 1999 and a balance sheet as of December 31, 1999. The documents supplied shall contain, at a minimum, the total sales (income) categorized by adult videos, adult magazines, tobacco, water pipes, and other and the total purchases (expenses) categorized by adult videos, adult magazines, tobacco, water pipes, and other and the total inventory categorized by adult videos, adult magazines, tobacco, water pipes, and other.

2

Licensee shall obtain and retain a current and valid tobacco license from the State of Georgia.

3.

The City of Marietta shall have the right to make periodic inspections of the premises and inventory.

4.

Licensee shall not allow any persons within the licensed premises who are under the years of eighteen (18) years of age.

5.

Licensee agrees to comply with the Code of Ordinances of the City of Marietta.

6.

Licensee agrees that it will not sell, display or have on the premises any instruments, devices, paraphernalia, products, article or articles which are designed, sold or viewed for use in connection with "specified sexual activities" as defined in the Marietta Adult Entertainment Code or which are sold or marketed primarily for stimulation of human genital organs.

7.

Licensee agrees that it shall not:

(a) Have twenty percent (20%) or more of its total retail floor space which is open to the public used for the sale of adult videos or other

adult items defined in Section 8-20-020 of the Code of the City of Marietta.

(b) Derive more than twenty percent (20%) of its revenue from the sale of adult videos or other items defined in Section 8-20-020 of the Code of the City of Marietta, and

(c) Have more than twenty percent (20%) of its stock in trade diverted to adult videos or other items defined in Section 8-20-020 of the Code of the City of Marietta.

8.

This license shall be good only at 1690 Cobb Parkway, Suite D, Marietta , Georgia 30062.

This 24 day of June, 1999.

1690 COBB LLC

BY: _____/s/_____
ERIK CLABAUGH

_____/s/_____
ALAN I. BEGNER,
Attorney for 1690 Cobb LLC

BUSINESS LICENSE
205 Lawrence Street
P.O. Box 609
Marietta, Georgia 30061

Phone (770) 794-5520
Fax (770) 794-5685
http://www.city.marietta.ga.us

June 23, 2003

Mr. Ralph Megginson
DIME ONE LLC
d/b/a Inserection A Fantasy Store
1739 Cheshire Bridge Rd., N.E.
Atlanta, GA 30324-4921

Re: License Number 03-49421 issued to DIME ONE LLC d/b/a Inserection A Fantasy Store, 63 Cobb Parkway North, Marietta, Georgia

Dear Mr. Megginson:

The Business License Manager of the City of Marietta held a hearing regarding the above license on Wednesday, June 18, 2003 pursuant to the notice delivered to the licensee on June 13, 2003, a copy of which is attached. The purpose of the hearing, as set forth in the notice of the hearing and the Marietta City Code, was to determine whether to suspend or revoke the occupation tax certificate or any other license

issued to the licensee by the City of Marietta. The hearing was conducted in accordance with the Marietta City Code and in particular, Code Section 8-4-405. The license at issue in this matter is attached. Notice of the hearing was hand delivered to the licensee on June 13, 2003 and was delivered to Ms. Nicki Strong, Manager.

The following attorneys participated in the hearing as follows: Mr. Robert Donovan presented evidence on behalf of the Marietta Police Department; Mr. Alan Begner presented argument on behalf of the above licensee and represented the licensee at the hearing; City attorney Doug Haynie assisted the Business License Manager in this matter. By agreement of the parties, the hearings were consolidated for the purpose of this hearing. A court reporter employed by Mr. Begner recorded the proceedings.

In issuing this ruling, I have considered the arguments presented by the attorney for the licensees, all evidence presented at the hearing and the testimony given during the hearing. In addition, I have considered the severity of the allegations, the evidence submitted and the testimony presented and have considered all other matters required by City Code Section 8-4-405.

Prior to the notice of the hearing given to the licensee on June 13, 2003, the City Manager gave approval for the Business License Manager to proceed with notice and hearing in this matter.

As part of the review of the evidence in this matter, the Business License Manager has reviewed the Business License/Occupation Tax Certificate, attached, including the conditions and stipulations attached thereto.

Based upon the advice of the city attorney, the motions made by the attorney for the licensee and the legal issues raised are denied and found to be without merit.

Based upon the above, and based upon the review of the items introduced into evidence in the hearing on June 18, 2003 and the testimony presented, I hereby find that evidence presented and the sale of the items introduced into evidence upon and within the premises licensed pursuant to the attached license constitute a violation of the conditions and stipulations attached to the license and that same constitute a violation of the ordinances of the City of Marietta, including the adult entertainment ordinance of the City of Marietta as referenced in Paragraph 6 of the conditions and stipulations attached to the license. In addition, I find that the evidence and the sale of the items introduced into evidence upon and within the licensed premises constitute a violation of the criminal laws of the State of Georgia, including O.C.G.A. §16-12-80(c). I further find that the above violations are materially related to the operation of the business of the licensee.

Based upon the above and based upon my review and consideration of all evidence and testimony submitted in the above matter, as well as the severity

of the allegations, I hereby revoke, in its entirety, license number 03-49421 effective today's date, June 23, 2003. Subject to appeal, the revocation shall commence today, June 23, 2003 and continue through the date of expiration of the license, December 31, 2003. Based upon this ruling and the revocation of such license, all sales, pending appeal, must immediately cease and desist and the licensee shall surrender the attached license to the Business License Manager of the City of Marietta at the expiration of the ten (10) day appeal period. In the event the licensee desires to appeal this decision, same shall be done within ten (10) days pursuant to Code Section 8-4-405.

Sincerely,

_____/s/_____
Scott Everingham
Business License Manager

cc: Mr. William F. Bruton, Jr., City Manager
Chief Bobby D. Moody, Marietta Police Department
Mr. Douglas R. Haynie, City Attorney (Via Facsimile No. 770-424-8900)
Mr. Robert I. Donovan, City Solicitor (Via Facsimile No. 770-427-9891)
Mr. Alan I. Begner (Via Facsimile No. 404-872-5763)

Attachments: Notice of hearing dated June 13, 2003
License Number 03-49421

City of Marietta Business License and Revenue Division
205 LAWRENCE ST NE*DRAWER 609*
MARIETTA GA 30061
(770) 794-5520

BUSINESS LICENSE/OCCUPATION
TAX CERTIFICATE
PLESE DISPLAY AT ALL TIMES
SUBJECT TO ALL ORDINANCS OF
MAYOR AND COUNCIL

NOT TRANSFERABLE

ACCOUNT NUMBER 9918564 5399002

NUMBER 03-49421

INSERECTION A FANTASY STORE
1739 CHESHIRE BRIDGE RD NE
ATLANTA GA 30324-4921

FOR YEAR	2003
EXPIRATION DATE	12/31/03
BEGIN OPERATION DATE	03/13/03

NOTIFY THIS OFFICE OF ANY CHANGE OF ADDRESS, OWNERSHIP, FIRM NAME, OR CLASSIFICATION

OWNER DIME ONE LLC

DESCRIPTION OF SIC CODE

GENERAL MERCHANDISE, RETAIL

$25.00

CLASS 02

BUSINESS ADDRESS:
63 COBB PKWY N
MARIETTA GA 30062

THIS LICENSE IS SUBJECT TO THE CONDITIONS AND STIPULATIONS WHICH ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. LICENSE NOT VALID WITHOUT ATTACHED CONDITIONS AND STIPULATIONS.

TAX	$	25.00
PENALTY	$	.00
TOTAL	$	25.00

DATE PAID 3/17/03

SIGNED_____/s/_____
SCOTT EVERINGHAM

CONDITIONS AND STIPULATIONS REGARDING LICENSE ISSUED BY THE CITY OF MARIETTA TO DIME ONE LLC

The following additional stipulations are attached to any license which may be issued by the City of Marietta to DIME ONE LLC and are incorporated by reference into the license and are considered part of the license as follows:

1.

DIME ONE LLC (hereinafter "licensee") shall supply to the City of Marietta no later than February 1, 2004, a statement of income and expenses for the license period ending December 31, 2003 and a balance sheet as of December 31, 2003. The documents supplied shall contain, at a minimum, the total sales (income) categorized by adult videos, adult magazines, tobacco, water pipes, and other and the total purchases (expenses) categorized by adult videos, adult magazines, tobacco, water pipes, and other and the total inventory categorized by adult videos, adult magazines, tobacco, water pipes, and other.

2

Licensee shall obtain and retain a current and valid tobacco license from the State of Georgia.

3.

The City of Marietta shall have the right to make periodic inspections of the premises and inventory.

4.

Licensee shall not allow any persons within the licensed premises who are under the years of eighteen (18) years of age.

5.

Licensee agrees to comply with the Code of Ordinances of the City of Marietta.

6.

Licensee agrees that it will not sell, display or have on the premises any instruments, devices, paraphernalia, product, articles which are designed, sold or viewed for use in connection with "specified sexual activities" as defined in the Marietta Adult Entertainment Code or which are sold or marketed primarily for stimulation of human genital organs.

7.

Licensee agrees that it shall not:

a) Have twenty percent (20%) or more of its total retail floor space which is open to the public used for the sale of adult

videos or other adult items defined in Section 8-20-020 of the Code of the City of Marietta.

b) Derive more than twenty (20%) of its revenue from the sale of adult videos or other items defined in Section 8-20-020 of the Code of the City of Marietta, and

c) Have more than twenty (20%) of its stock in trade diverted to adult videos or other items defined in Section 8-20-020 of the Code of the City of Marietta.

8.

This license shall be good only at 63 Cobb Parkway North, Marietta, Georgia 30062.

This 13th day of March, 2003.

DIME ONE LLC

BY: _____/s/_____
RALPH MEGGINSON